

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition  
of

Martin Hurwitz, M.D., P.C.

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AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :  
of a Determination or a Refund of Corporation :  
Franchise Tax under Article 9A and 27 of the Tax :  
Law for the Fiscal Year Ending 11/30/76.

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State of New York  
County of Albany

Connie Hagelund, being duly sworn, deposes and says that she is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 29th day of June, 1983, she served the within notice of Decision by certified mail upon Martin Hurwitz, M.D., P.C., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

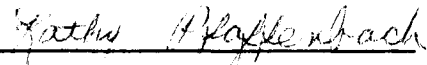
Martin Hurwitz, M.D., P.C.  
124 E. 84th St.  
New York, NY 10028

and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this  
29th day of June, 1983.

  
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\_\_\_\_\_

AUTHORIZED TO ADMINISTER  
OATHS PURSUANT TO TAX LAW  
SECTION 174

STATE OF NEW YORK  
STATE TAX COMMISSION  
ALBANY, NEW YORK 12227

June 29, 1983

Martin Hurwitz, M.D., P.C.  
124 E. 84th St.  
New York, NY 10028

Gentlemen:

Please take notice of the Decision of the State Tax Commission enclosed herewith.

You have now exhausted your right of review at the administrative level. Pursuant to section(s) 1090 of the Tax Law, any proceeding in court to review an adverse decision by the State Tax Commission can only be instituted under Article 78 of the Civil Practice Law and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within 4 months from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to:

NYS Dept. Taxation and Finance  
Law Bureau - Litigation Unit  
Building #9 State Campus  
Albany, New York 12227  
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
of	:	
MARTIN HURWITZ, M.D., P.C.	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Corporation Franchise Tax under	:	
Articles 9-A and 27 of the Tax Law for the	:	
Fiscal Year Ending November 30, 1976.	:	

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Petitioner, Martin Hurwitz, M.D., P.C., 124 East 84th Street, New York, New York 10028, filed a petition for redetermination of a deficiency or for refund of corporation franchise tax under Articles 9-A and 27 of the Tax Law for the fiscal year ending November 30, 1976 (File No. 34254).

A formal hearing was held before Daniel J. Ranalli, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on September 16, 1982 at 9:15 A.M. Petitioner appeared pro se. The Audit Division appeared by Paul B. Coburn, Esq. (Kevin Cahill, Esq., of counsel).

ISSUE

Whether the statute of limitations for assessment of additional franchise tax due had expired where petitioner had filed a return using an erroneous figure in the computations.

FINDINGS OF FACT

1. On July 16, 1981 the Audit Division issued a Notice and Demand for Payment of Franchise Tax against petitioner, Martin Hurwitz, M.D., P.C., in the amount of \$175.00, plus interest of \$65.75, for a total due of \$240.75.

2. As explained on the Notice, Chapter 895 of the Laws of 1975 increased the minimum franchise tax to \$250.00 and also imposed a one year 20 percent surcharge on the tax applicable to each taxpayer's first taxable period begun

on or after January 1, 1975. The pre-printed tax forms for the taxable year 1975 contained the old minimum tax of \$125.00. To correct this error, the Department of Taxation and Finance attached riders to the returns which contained instructions regarding the new law. These riders were mailed out to taxpayers along with the returns.

3. Petitioner testified that he had never received a copy of the aforesaid rider and only became aware of it at a pre-hearing conference. Petitioner, therefore, filed his 1975 return and paid the old minimum tax of \$125.00.

4. Petitioner's return was filed on February 15, 1977. The Notice and Demand for Payment was issued on July 16, 1981, over four years later. Petitioner claimed that this determination was barred by the three year statute of limitations for assessments as provided for in section 1083(a) of the Tax Law.

5. The Audit Division maintained that use of the \$125.00 figure was a mathematical error and, therefore, the amount of tax which the return would have shown to be due but for this mathematical error was deemed to be assessed as of the date of filing under section 1082(a) of the Tax Law and, thus, within the statute of limitations.

6. Petitioner argued that since he had no notice of the Tax Law change and used a pre-printed figure on a Tax Department form, without making any computation errors, he did not make a mathematical error within the generally accepted meaning of that term and, therefore, section 1082(a) should not apply to his case.

#### CONCLUSIONS OF LAW

A. That section 1082(a) of the Tax Law provides that "the amount of tax which a return shows to be due, or the amount of tax which a return would have shown to be due but for a mathematical error, shall be deemed to be assessed on the date of filing of the return."

B. That "everyone is presumed to know the Tax Law" (Mabie v. Fuller, 255 N.Y. 194, 201). Moreover, "parties dealing with the Government are charged with knowledge of and are bound by statutes...despite reliance...upon incorrect information received from Government agents or employees" (Flamm v. Ribicoff, 203 F. Supp. 507, 510 (S.D.N.Y.)). The Tax Law change rider distributed to taxpayers was only done as a convenience to taxpayers. The Department of Taxation and Finance is under no statutory obligation to notify each individual taxpayer of current changes in the law. Petitioner was, therefore, held to have knowledge of the change in the law which increased the minimum franchise tax to \$250.00 and imposed the one year 20 percent surcharge.

C. That the definition of mathematical error within the meaning and intent of the Tax Law is not so narrow as to exclude all but strictly arithmetic errors (See e.g. Tax Law §1081(d) - mathematical error includes overstatement of amount paid as estimated tax).

D. That petitioner's use of an erroneous minimum tax figure in computing his tax due and failure to compute the 20 percent surcharge was a mathematical error within the meaning and intent of section 1082(a) of the Tax Law and, therefore, the correct tax due was deemed assessed as of February 15, 1977, the date of filing of the tax return and thus within the three year statute of limitations.

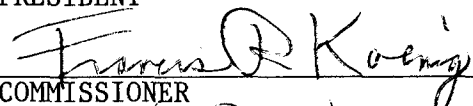
E. That the petition of Martin Hurwitz, M.D., P.C. is denied and the Notice and Demand for Payment of Franchise Tax issued July 16, 1981 is sustained.


DATED: Albany, New York

STATE TAX COMMISSION

JUN 29 1983

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER